

LEADVILLE MINE DRAINAGE TUNNEL REMEDIATION ACT OF 2008

JUNE 17, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 5511]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5511) to direct the Secretary of the Interior, acting through the Bureau of Reclamation, to remedy problems caused by a collapsed drainage tunnel in Leadville, Colorado, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 5511 is to direct the Secretary of the Interior, acting through the Bureau of Reclamation, to remedy problems caused by a collapsed drainage tunnel in Leadville, Colorado, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Leadville Mine Drainage Tunnel (LMDT) is located in west central Colorado, near the town of Leadville. The former U.S. Bureau of Mines constructed the tunnel to provide drainage for portions of the extensive, interconnected mine workings in the Leadville Mining District during the periods 1943–1945 and 1950–1952. When construction finally ceased, the LMDT extended for 11,299 feet from the portal. In 1959, the Bureau of Reclamation (BOR) assumed ownership of the LMDT and intended to use mine water to augment the Fryngpan-Arkansas Project, the BOR project that draws water primarily from the Arkansas River for delivery in Eastern Colorado. Notwithstanding its intent, the BOR has

never been able to use the LMDT for the Fryingpan-Arkansas Project.

Since 1959, several tunnel collapses have trapped water within the tunnel. These blockages have resulted in decreased LMDT effluent flow rates, differences in water elevations at various points along the tunnel alignment, and rising water levels in the retained 'mine pool'. In 1989, the Sierra Club and the Colorado Environmental Coalition challenged the BOR in court, alleging Clean Water Act violations as a result of the contaminated discharges from the LMDT. To settle the lawsuit, BOR agreed to construct a Waste Water Treatment Plant (WWTP) near the LMDT portal. Title VII of P.L. 102-575 authorized BOR to construct and operate the WWTP.

P.L. 102-575 specified that the BOR's WWTP "shall be constructed to treat the quantity and quality of effluent historically discharged" from the LMDT. This limitation on effluent that is "historically discharged" is significant because in 1983, the Environmental Protection Agency (EPA) designated as a Superfund site a sizeable portion of the Leadville area, known as the California Gulch National Priority List Site. The language regarding the WWTP in the original authorization was inserted to acknowledge that the LMDT was not a source of contamination at the Superfund site, and to protect the BOR from any unjustified Superfund responsibility.

The 18-square-mile California Gulch Site is divided into 12 Operable Units (OUs). Under the Superfund statute, EPA must identify all sources of contamination, the potentially responsible parties (PRPs) for the contamination, and develop and implement remedies for each OU in conjunction with the PRPs. EPA may not use Superfund money for any remedial action that involves a federally-owned facility. The EPA and the BOR have established that the tunnel is hydraulically connected to OU6. In 2003, EPA issued a Record of Decision (ROD) for OU6 supporting infrastructure improvements by the BOR to increase the plant's water treatment capacity.

Despite EPA's clear mandate under the Superfund law that it cannot use Superfund money to pay for remedial actions at a facility owned by another federal agency, the BOR cites the "historically discharged" language in Title VII of P.L. 102-575 as a limitation on the BOR's authority to expand the water treatment capacity. The BOR also opposes payments because the LMDT is not an actual source of contamination on the Superfund site. However, continuing structural deterioration in the LMDT has caused increasing amounts of water to back up in the tunnel. A major collapse of a segment of the LMDT was detected in 1995. All of the impounded water is assumed to be contaminated with metals. This impounded water exacerbates EPA's Superfund problem and also poses the threat of a sudden catastrophic release into the Arkansas River. There are estimates that between 0.5 to 1.0 billion gallons of water are currently impounded behind the various LMDT collapses. In addition, newly discovered surface seeps in the area, at elevations above the portal, indicate a rise in water level behind the blockages.

H.R. 5511 amends the Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575) by repealing a provision

that restricts the use of a waste water treatment plant owned and operated by the BOR to only treating ‘historically discharged’ effluent from the LMDT. H.R. 5511 also directs the BOR to participate in the OU6 remedy for the California Gulch Superfund site as defined by the EPA’s 2003 ROD for that unit by: (1) Treating water behind any blockage or bulkhead in the tunnel; and (2) managing and maintaining the mine pool behind such blockage or bulkhead at a level that prevents surface runoff and releases and minimizes the potential for Tunnel failure due to excessive water pressure.

The long-term solution to implement EPA’s ROD and clean-up plan for OU6 remains unresolved because BOR maintains it is not responsible for contamination not associated with historical discharge from the LMDT. H.R. 5511 would address the situation by ensuring that ample authority exists for BOR to participate in all clean-up efforts involving the LMDT. The Administration opposes the bill on the premise that Congress should wait until the BOR conducts a risk assessment and work out their own agreement with EPA. The Committee is aware of no other opposition to H.R. 5511.

COMMITTEE ACTION

H.R. 5511 was introduced on February 28, 2008, by Rep. Doug Lamborn (R-CO). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On May 8, 2008, the Subcommittee on Water and Power held a hearing on the bill.

On May 22, 2008, the Subcommittee on Water and Power met to mark up the bill. The bill was forwarded to the Full Committee by unanimous consent. On June 11, 2008, the Full Natural Resources Committee met to consider the bill. H.R. 5511 was ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Leadville Mine Drainage Tunnel Remediation

Section 1(a) provides that the legislation may be cited as the “Leadville Mine Drainage Tunnel Remediation Act of 2008.”

Section 1(b) strikes section 705 of P.L. 102–575, the provision that limits the use of the WWTP to effluent “historically discharged” from the LMDT.

Section 1(b) also amends section 708 of P.L. 102–575 to direct the Secretary to participate in the OU6 remedy as defined by the EPA’s 2003 ROD by (1) treating water behind any blockage or bulkhead in the LMDT; and (2) managing and maintaining the mine pool behind such blockage or bulkhead at a level that prevents surface runoff and releases and minimizes the potential for LMDT failure due to excessive water pressure. Section 1(b) also amends section 708 to ensure that the BOR shall not have authority at any other facility listed on the National Priorities List under Superfund.

Section 1(b) further adds a new section 709 to P.L. 102–575, to direct the Secretary to take any steps necessary to repair and maintain the structural integrity of the LMDT to prevent tunnel failure or an uncontrolled release of water from any portion of the tunnel.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to direct the Secretary of the Interior, acting through the Bureau of Reclamation, to remedy problems caused by a collapsed drainage tunnel in Leadville, Colorado.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 5511—Leadville Mine Drainage Tunnel Remediation Act of 2008

Summary: H.R. 5511 would require the Secretary of the Interior to treat and manage water in a mine pool in the Leadville Mine Drainage Tunnel (LMDT) in Colorado. The treatment would be part of a plan to clean up the California Gulch superfund site in Colorado.

Based on information from the Bureau of Reclamation and assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 5511 would cost \$90 million over the 2009–2013 period. Enacting the legislation would not affect direct spending or revenues.

H.R. 5511 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5511 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	10	20	30	30	0	90
Estimated Outlays	6	15	24	30	15	90

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the start of fiscal year 2009 and that the necessary amounts will be appropriated for each year.

H.R. 5511 would require the Secretary of the Interior to treat and manage water in a mine pool in the LMDT in Colorado. The Bureau of Reclamation currently has a water treatment plant at the site, but the plant would have to be expanded to handle the anticipated quantity of water from the pool.

Based on information from the Bureau of Reclamation and assuming appropriation of the necessary amounts, CBO estimates that improvements to the water treatment plant and other costs of treating the pool water would total \$90 million over the 2009–2013 period. After 2013, the bureau would incur additional costs of \$2 million to \$5 million per year for operating and maintaining the expanded plant.

The bill also would require the Secretary to repair and maintain the structural integrity of the LMDT, as necessary, to prevent tunnel failure or an uncontrolled release of water. Based on information from the bureau, CBO does not anticipate that any work would be needed to repair or maintain the tunnel during the next five years.

Intergovernmental and private-sector impact: H.R. 5511 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Tyler Kruzich; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 5511 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**RECLAMATION PROJECTS AUTHORIZATION AND
ADJUSTMENT ACT OF 1992**

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**TITLE VII—LEADVILLE MINE DRAINAGE TUNNEL,
COLORADO**

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[SEC. 705. LIMITATION.

 【The treatment plant authorized by this title shall be designed and constructed to treat the quantity and quality of effluent historically discharged from the Leadville Mine Drainage Tunnel.】

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SEC. 708. WATER QUALITY RESTORATION.

 (a)(1) The Secretary is authorized, in consultation with the State of Colorado, the Administrator of the Environmental Protection Agency, and other Federal entities, to conduct investigations of water pollution sources and impacts attributed to mining-related and other development in the Upper Arkansas River basin, to develop corrective action plans, and to implement corrective action demonstration projects. Neither the Secretary nor any person participating in a corrective action demonstration project shall be liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act for costs or damages as a result of actions taken or omitted in the course of implementing an approved work plan developed under this section; *Provided*, That this subsection shall not preclude liability for costs or damages which result from negligence on the part of such persons. 【The Secretary shall have】 *Except as provided by paragraph (2), the Secretary shall have* no authority under this section at facilities which have been listed or proposed for listing on the National Priorities List, or are subject to or covered by the Resource Conservation and Recovery Act. For the purpose of this section, the term “Upper Arkansas River basin” means the Arkansas River hydrologic basin in Colorado extending from Pueblo Dam upstream to its headwaters.

 (2) *The Secretary shall participate in the implementation of the operable unit 6 remedy for the California Gulch Superfund Site, as such remedy is defined in the Environmental Protection Agency’s 2003 Record of Decision for such operable unit, by—*

 (A) *treating water behind any blockage or bulkhead in the Leadville Mine Drainage Tunnel, including surface water diverted into the Tunnel workings as part of the remedy; and*

 (B) *managing and maintaining the mine pool behind such blockage or bulkhead at a level that precludes surface runoff and releases and minimizes the potential for tunnel failure due to excessive water pressure in the tunnel.*

* * * * *

(f) There is authorized to be appropriated such sums as may be required to fulfill the provisions of sections 707 [and 708], 708, and 709 of this title.

SEC. 709. TUNNEL MAINTENANCE.

The Secretary shall take such steps to repair or maintain the structural integrity of the Leadville Mine Drainage Tunnel (LMDT) as may be necessary in order to prevent tunnel failure and to preclude uncontrolled release of water from any portion of the tunnel.

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HOUSE OF REPRESENTATIVES, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,

Washington, DC, June 12, 2008.

Hon. NICK RAHALL,
Chairman, Committee on Natural Resources, House of Representatives, Washington, DC.

DEAR CHAIRMAN RAHALL: I write to you regarding H.R. 5511, a bill to direct the Secretary of the Interior to remedy problems caused by a collapsed drainage tunnel in Leadville, Colorado.

H.R. 5511 contains provisions that fall within the jurisdiction of the Committee on Transportation and Infrastructure. I recognize and appreciate your desire to bring this legislation before the House in an expeditious manner and, accordingly, I will not seek a sequential referral of the bill. However, I agree to waive consideration of this bill with the mutual understanding that my decision to forego a sequential referral of the bill does not waive, reduce, or otherwise affect the jurisdiction of the Committee on Transportation and Infrastructure over H.R. 5511.

Further, the Committee on Transportation and Infrastructure reserves the right to seek the appointment of conferees during any House-Senate conference convened on this legislation on provisions of the bill that are within the Committee's jurisdiction. I ask for your commitment to support any request by the Committee on Transportation and Infrastructure for the appointment of conferees on H.R. 5511 or similar legislation.

Please place a copy of this letter and your response acknowledging the Committee on Transportation and Infrastructure's jurisdictional interest in the Committee Report on H.R. 5511 and in the Congressional Record during consideration of the measure on the House Floor.

I look forward to working with you as we prepare to pass this important legislation.

Sincerely,

JAMES L. OBERSTAR,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON NATURAL RESOURCES,
Washington, DC, June 16, 2008.

Hon. JAMES OBERSTAR,
*Chairman, Committee on Transportation and Infrastructure, Wash-
ington, DC.*

DEAR MR. CHAIRMAN: Thank you for your willingness to expedite floor consideration of H.R. 5511, a bill to direct the Secretary of the Interior to remedy problems caused by a collapsed drainage tunnel in Leadville, Colorado.

I appreciate your willingness to waive rights to further consideration of H.R. 5511, notwithstanding the jurisdictional interest of the Committee on Transportation and Infrastructure. Of course, this waiver does not prejudice any further jurisdictional claims by your Committee over this legislation or similar language. Furthermore, I agree to support your request for appointment of conferees from the Committee on Transportation and Infrastructure if a conference is held on this matter.

This exchange of letters will be placed in the committee report and inserted in the Congressional Record as part of the consideration of the bill on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

With warm regards, I am
Sincerely,

NICK J. RAHALL, II,
Chairman.

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